REMARKS

STATUS OF THE CLAIMS

Applicants have canceled claims 1-4, 6, 8, and 11-13 without prejudice to their later prosecution in this or another application. Applicants have added claims 21 to 32. Re-group new claims to the examiner's restriction Support for those claims can be found, for example, in the claims as filed. Applicants have amended the dependencies of claims 5, 7, 9, 10, 14-16, and 20. In addition, Applicants have made various other amendments to define more precisely the invention. Since all of these inventions are reasonably conveyed by the specification and original claims, there is no issue of new matter. Nor have amendments made merely to clarify the existing subject matter narrowed the scope of the claims in which such amendments have been made.

RESTRICTION REQUIREMENT

In the Office Action a restriction requirement was made under 35 USC §121 between the following groups of claims:

Group I	Claims 1-14, drawn to chemical compounds, classified in classes 544, 546, and 548 and claim 15, drawn to pharmaceutical compositions comprising the compounds, classified in class 514; and
Group II	Claims 16-20, drawn to pharmaceutical compositions and methods of treating diseases, classified in class 514.

The inventions were alleged to be related as product and process of use, and distinct because the kinase-implicated conditions, such as cancer, are treatable with materially different agents, citing MPEP §806.05(h).

THE RESTRICTION REQUIREMENT IS IMPROPER

Initially, Applicants submit that the restriction requirement is improper, for failing to satisfy the requirements of MPEP §803:

> "(A) The inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05 - §806.05(i)); **and**
>
> (B) **There must be a *serious burden* on the examiner** if restriction is required (see MPEP §803.02, §806.04(a)-§806.04(i), §808.01(a), and §808.02)." (Emphasis added.)

No such serious burden has been alleged in the Office action, and it is Applicants' position that no such serious burden exists.

More specifically, the inventions of Groups I and II have been categorized as distinct under MPEP §806.05, which provides:

> A product and a process of using the product can be shown to be distinct inventions if either or both of the following can be shown: (A) the process of using as claimed can be practiced with another materially different product; or (B) the product as claimed can be used in a materially different process.

The Examiner maintains that the process for using the product as claimed can be practiced with another materially different product. The Examiner has cited the fact that cancer is treatable by methodologies materially different from those claimed in the subject application as supporting this argument. While cancer and other kinase-implicated conditions diseases can indeed be treated with other agents, the methods of the invention can be practiced with no product not identical to or, under the law, not equivalent to, the compounds recited in such claims. Applicants therefore respectfully submit that the first criteria under MPEP §806.05 has not been met.

Moreover, notwithstanding the classifications into which these compounds and methods fall, the search for provisionally elected Group I would appear of necessity also to cover the art relevant to Group II as a source for novelty- or obviousness-defeating prior compositions of matter. The restriction requirement should, therefore, be withdrawn.

PROVISIONAL ELECTION

Applicants provisionally elect the subject matter of Group I (which after entry of this amendment, includes Claims 5, 7, 9, 10, 14, 15, and 21-27) and provisionally identify the compound that is N3-(2-methoxybenzyl)-5-(4-phenoxyphenyl)-pyrazine-2,3-diamine as the species for prosecution on the merits. Compound Claims 7 and 21-23 and method claims 16 to 20 are readable on the identified species. The right to pursue non-elected subject matter in one or more divisional applications is expressly reserved.

INFORMATION DISCLOSURE STATEMENT

The Office has indicated that the references authored by Coudert et al., Emelina et al, Zayet et al, and Cavalier et al. were not in the file. Copies of each of these references are enclosed herewith.

CONCLUSION

Applicants maintain that restriction is improper in the present application because examination of the compounds and the claimed method of their use would not appear to impose an undue or serious burden on Office resources.

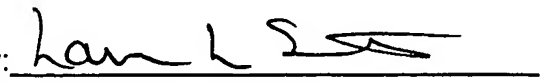
Reconsideration of the restriction requirement is earnestly solicited.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 27, 2005

By: 

Lauren L. Stevens
Reg. No. 36,691
Customer No. 22,852